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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 OAKLAND DIVISION

15 SIERRA CLUB and SOUTHERN BORDER  
16 COMMUNITIES COALITION,

17 Plaintiffs,

18 v.

19 DONALD J. TRUMP, et al.,

20 Defendants.

21 Case No. 4:19-cv-00892-HSG

22 **CONSENT MOTION OF TOHONO  
O'ODHAM NATION FOR LEAVE TO  
FILE BRIEF AS *AMICUS CURIAE* IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT**

23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

24 The Tohono O'odham Nation (the "Nation") hereby moves this Court for leave to file a  
brief as *amicus curiae* in the above-captioned case in support of the Motion of Plaintiffs Sierra  
Club and Southern Border Communities Coalition for Partial Summary Judgment, Dkt. No. 210.  
Plaintiffs and Defendants consent to the Nation's request for leave. A copy of the Nation's  
proposed *amicus curiae* brief is attached hereto as Exhibit 1, and a proposed order granting the  
Nation's Motion is attached as Exhibit 2.

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MOTION OF TOHONO O'ODHAM  
NATION FOR LEAVE TO FILE BRIEF AS  
AMICUS CURIAE

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## **IDENTITY AND INTEREST OF AMICUS CURIAE**

The Tohono O'odham Nation ("Nation") is a federally recognized Indian tribe with more than 34,000 members. The O'odham have lived in what is now Arizona and northern Mexico since time immemorial. The Nation's Reservation, located in southern Arizona, is one of the largest in the country, comprising nearly 2.8 million acres. The Nation's Reservation also shares more than sixty miles of border with the Republic of Mexico. The Nation has significant and well-documented connections to the lands that are the subject of the contemplated border wall construction at issue in this case, and the plants, animals and cultural resources within them.

The Nation's location on the Mexican border exposes its Reservation and members to major impacts from border crossing traffic, including border-related burglaries and thefts, litter, land desecration, damage to sacred cultural resources, destruction of protected species, migrant rescues, migrant deaths, drug trafficking, and human smuggling. While the Nation works closely with U.S. Customs and Border Patrol and U.S. Immigration and Customs Enforcement on border security, it receives extremely limited federal funding to address these impacts, and therefore is forced to spend millions of dollars annually from its own treasury on border security and enforcement and associated costs.

The proposed *amicus curiae* brief articulates the substantial harm that the Yuma Sector Project 3 construction will cause to the Nation. Yuma Sector Project 3 contemplates the construction of over thirty miles of border wall, through approximately half of Cabeza Prieta National Wildlife Refuge, to connect with the construction of border wall in Tucson Sector Projects 1 and 2, which involves construction across both Cabeza Prieta and Organ Pipe Cactus National Monument, ending less than two miles from the western boundary of the Nation’s Reservation. This new border wall will cause irreparable harm to natural and cultural resources of significant importance to the Nation, both in these sensitive areas and on the Nation’s Reservation. The construction of border walls in these areas will also substantially increase migrant traffic on the Nation’s Reservation lands, and exacerbate the impacts that the Nation experiences from this traffic and the cost to the Nation to address it.

1        This brief therefore will also assist the Court in addressing the public interest factor as part  
2 of considering Plaintiffs' requested injunctive relief. This factor properly focuses on the impact  
3 of the challenged conduct on non-parties like the Nation. *See California v. Azar*, No. 19-CV-  
4 01184, 2019 WL 1877392, at \*13 (N.D. Cal. Apr. 26, 2019) ("Plaintiffs are not the only ones that  
5 will suffer hardship absent an injunction ... In considering the public interest, we may consider  
6 the hardship to all individuals covered by the [challenged law], not limited to parties...."). Courts  
7 in this District have found *amicus* briefs particularly useful in addressing the public interest  
8 factor. *See Azar* at \*13; *see also Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1085-86 (N.D. Cal.  
9 2018) (noting that "[t]he amicus briefs underscore that the harms to [Plaintiffs] will also harm the  
10 public interest").

#### CONCLUSION

11        For the forgoing reasons, the Nation respectfully requests that the Court grant this motion  
12 for leave and accept for filing the accompanying *amicus curiae* brief.

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1 || Dated: October 18, 2019

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 18, 2019, I caused the foregoing document to be filed via the U.S. District Court for the Northern District of California's CM/ECF system, which I understand caused service on all registered parties.

DATED: October 18, 2019

/s/ Jessica L. Duggan

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